IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.176 OF 2005

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Mahesh Kothari Share &
Stock Brokers Pvt.Ltd. ...Petitioner

v/s.

Springfield Securities Ltd.
and Anr. ...Respondents

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Mr.Sean Wassoodew for the Petitioner.

Mr.P.N. Mody with Mr.Jayant Gaikwad i/b Ajay Khandhar for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 16TH NOVEMBER,2005

P.C.:

1. By this petition the Petitioner challenges the award made by the original arbitral tribunal of the Stock Exchange dated 31st March, 2004 as also the award made by the appellate arbitral tribunal dated 14-1-2005, whereby the award made by the original arbitral tribunal has been confirmed.

2. The first contention of the Petitioner is that the claim made by the Respondent was barred by the law of limitation. According to the Petitioner, the cause of action accrued to the Respondent on 27-8-1998. Thereafter, a joint reference was made by the Petitioner and other two group companies of the Petitioner. That reference was ultimately withdrawn and present reference was filed on 28-8-2001. Admittedly the period of limitation is three years. Even according to the Petitioner the cause of action accrued on 27-8-1998. Therefore, the period of limitation will have to be counted from 28-8-1998 and therefore filing of reference on 28-8-2001 would be on the last date of the limitation. Therefore, it

cannot be said that the reference has been made after expiry of period of limitation.

3. So far as merits of controversy are concerned, the claim of the Respondent was that the Respondent was entitled to the credit of the amount of Rs.3 lakh which was paid to the Petitioner on 10-7-1998 by cheque issued by a group company of the Respondent called SIS Shares & Stock Brokers Pvt.Ltd. and also Rs.65 lakh which were paid by cheque to the Petitioner dated 25-7-1998 by another group company of the Respondent called Shriram Indus Stock Ltd.

4. Perusal of the award made by the arbitral tribunal shows that the Petitioner did not dispute that he received the amount of Rs.3 lakh and Rs.65 lakh on the dates which are mentioned above. According to the Petitioner, he received the amount of Rs. 3 lakh by cheque from SIS shares. The arbitral tribunal, however, has found that in his account book the Petitioner has given credit for this amount to Shriram Indus Stock Ltd. and not to SIS shares from whom the cheque is received. According to the Respondent, the Respondent was entitled to be given credit for this amount because neither of two

group companies namely SIS shares and Shriram Indus Stock Ltd. was claiming the amount. So far as the amount of Rs.65 lakh received by the Petitioner by cheque on 25-7-1998, the cheque was issued by Shriram Indus Stock Ltd. In the account book the Petitioner had given credit for the amount to the same company which had issued the cheque namely Shriram Indus Stock Ltd. Perusal of the award shows that the arbitral tribunal has held that the Respondent was entitled to be given credit for the amount of Rs.3 lakh, cheque for which was issued by the company SIS shares, because according to the arbitral tribunal only two companies namely SIS shares and the Respondent were dealing with the Petitioner as a broker and the SIS shares did not claim the amount in Arbitration Reference No.467 of 2001. According to arbitral tribunal, therefore, it is only the Respondent who was entitled to be given credit for this amount. The submission of the learned Counsel appearing for the Petitioner is that while recording the finding that only two companies namely SIS shares and the Respondent were dealing with the Petitioner, the arbitral tribunal has ignored the correspondence on record viz. the letter dated 27-8-1998 from Shriram Indus Stock Ltd, which shows that Shriram

Indus Stock Ltd. was the third company belonging to the same group to which the credit of Rs.3 lakh was given in the account book of the Petitioner and it was also dealing with the Petitioner. According to the learned counsel for the Petitioner, therefore, the arbitral tribunal was not justified in recording a finding that it is the Respondent which is entitled to the credit of Rs.3 lakh. So far as other amount of Rs.65 lakh is concerned, perusal of the award shows that the arbitral tribunal has gone through the dealings between the parties and has held that this amount of Rs.65 lakh was given by the other group company namely Shriram Indus Stock Ltd. to cover the liability of itself as also of the Respondent company. The submission of the learned Counsel appearing for the Petitioner is that this amount was received by the Petitioner from the Shriram Indus Stock Ltd. and in his account book he has given credit for this amount to Shriram Indus Stock Ltd. In the absence of any authorisation from Shriram Indus Stock Ltd. as also in the absence of any evidence led by the Respondent to show that Shriram Indus Stock Ltd. had paid the amount to the Petitioner for covering the liability of itself as also of the Respondent, the arbitral tribunal was not

justified in holding that the amount was given by Shriram Indus Stock Ltd. to cover the liability of the Respondent also.

5. The submission of the learned Counsel appearing for the Respondent is that it is clear from the record as also the correspondence, specially the correspondence which is produced on record that three companies namely the Respondent, SIS shares Ltd. and Shriram Indus Stock Ltd. were dealing as group companies with the Petitioner and therefore the arbitral tribunal constituted by the trade-body approached the matter from that point of view and after going through the dealings between the parties has found that the cheque of Rs. 3 lakh was given by SIS shares for the benefit of the Respondent. Similarly, a cheque of Rs.65 lakh was given by Shriram Indus Stock Ltd. for the benefit of the Respondent also, and therefore, according to the learned Counsel the finding, being essentially a finding of fact, should not be disturbed by this Court. It is submitted that though the Petitioner in this petition claims that it is SIS shares which is entitled to the credit of Rs.3 lakh, in fact the Petitioner had given credit of that amount not to SIS

shares from whom the cheque was received but to the other group company namely Shriram Indus Stock Ltd. According to the learned Counsel this conduct of the Petitioner of actually receiving the cheque from SIS shares, but giving credit of that amount to other group company namely Shriram Indus Stock Ltd. shows that the Petitioner was also treating the companies as group companies, where amounts were being deposited by one entity for the benefit of the other entity. On the basis of these dealings the arbitral tribunal has drawn a reference and has made the award, and therefore, considering the extremely limited jurisdiction of this Court to interfere with the award, this court should not disturb the award made by the arbitral tribunal which may result in giving unfair advantage to the Petitioner/stock broker.

6. In my opinion, the finding recorded by the tribunal that the Respondent is entitled to benefits of the amount of Rs.3 lakh and Rs.65 lakh deposited by the other two group companies is to be examined in the light of dealings between the parties and no fault can be found with the approach adopted by the arbitral tribunal in approaching the question that

arose for consideration from that point of view. Admittedly an amount of Rs.3 lakh was received by the Petitioner by a cheque and the cheque was issued by SIS Shares Ltd. Therefore, if the Petitioner was not dealing with the three companies as a group, he would have given credit of that amount only in the account of SIS shares which had issued the cheque. But the Petitioner in his account book admittedly has given credit of that amount to Shriram Indus Stock Ltd. It is further to be seen that the Petitioner itself has pointed out the correspondence to me which shows that the three companies were dealing as group companies. The arbitral tribunal after going through the dealings that the three companies had with the Petitioner has found that the Respondent is entitled to the benefit of Rs.3 lakh for which the cheque was issued by SIS shares. What is interesting is that the cheque was given by SIS Shares, but SIS Shares was not claiming benefit of this amount in its Arbitration Reference No.467 of 2001. The fact that SIS Shares were not claiming benefit of this amount in Arbitration Reference No.467 of 2001 is not disputed even in the petition. Thus, the situation that emerges is that SIS Shares which has actually given the amount is not claiming benefit of that

amount and the Petitioner wants to deny benefit of that amount to the Respondent who was claiming the amount. It is, thus, clear that the result of setting aside the finding recorded by the arbitral tribunal in this regard would be that the Petitioner appropriates the amount by not giving credit either to SIS Shares or to the Respondent. So far as the finding of the arbitral tribunal in relation to the amount of Rs.65 lakh is concerned, it is solely based on appreciation of evidence on record namely dealings between the parties. It appears from the award that the arbitral tribunal observed that this amount was paid by Shriram Indus Stock Ltd to cover part of its liability and also for the benefits of the Respondent. This is essentially a finding of fact and I find that the arbitral tribunal has made the award to do justice between the parties and therefore, it will not be appropriate for this court to interfere with the award. While considering the petition filed under Section 34, especially against the award made by the arbitral tribunal constituted by a trade-body, the court can not lose sight of the fact that the arbitral tribunal consisting of persons who also know the trade. I have not been pointed out any legal infirmity in the award. The award is based

on finding of fact recorded by the tribunal on the basis of material produced before it. As the arbitral tribunal has found that the three companies were dealing with the Petitioners as group companies, in my opinion, absence of any written authorisation either by SIS Shares or by Shriram Indus Stock Ltd. would not be necessary, because the Petitioner himself without any written authorisation from SIS Shares has given credit of the amount of Rs.3 lakh to Shriram Indus Stock Ltd.

7. Taking overall view of the matter, therefore, in my opinion, as I find that the award made by the original arbitral tribunal, confirmed by the appellate arbitral tribunal does not result in failure of justice, it need not be interfered with by this Court. The Petition, therefore, fails and is dismissed. No order as to costs.

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